



# Commercial Wind Farms

Regulatory  
Environment  
What You Need to  
Know About  
Large Wind Farm  
Development

















# A Little History

- Logan County is a rural agricultural community that has always cussed the wind. At a recent ground breaking ceremony a mayoral comment concurred with that and went on to say we finally found a good use for the wind. We have permitted an area 42 miles wide by 9 miles deep. In that area we have 942 permitted towers that could generate over 1GW of energy. We are now breaking new ground that will eventually generate more energy than the base load for the State of California.



# What Codes Were In Place to Accommodate This Growth

- Our current codes are 1990 based codes that revolve around agriculture and other minor extractive energy industry pursuits.
- We do have a CUP and SUP code structure that could be used to address other industry developments.
- Upon my arrival in the community I encouraged the use of Development Agreements to close the gap.
- Other tools: Individual Right-of-Way Permits, Building Codes, Environmental Codes and a 1% Use Tax that supplants the 1% sales tax on new construction.  $\frac{1}{2}$  of the Use Tax retires the Bonds at Justice Center,  $\frac{1}{4}$  goes to Road and Bridge for impacts to the road systems and the final  $\frac{1}{4}$  goes to the general fund. The State of Colorado also allows a minor subdivision process.

# Fiscal Impact to Community

- Of the first 300 1.5MW wind towers erected in the County 264 in 1 project, built in 2 phases (2007) expended \$700 million dollars.
- 200 jobs were created during construction.
- Retail Sales taxes increased 83% in 2007 over 2003 [has leveled off to 71% increase in 2008/9 over 2003 revenues.
- When the project is completed the County estimated energy/tax collections of \$3.8 million per year for 30 years. Up front County has received \$4.5 million in building permit fees and use taxes.
- Land owners will see approximately \$45 million in easement payments over the next 30 years.
- \$8-10 million per year for ongoing operation of the facility with \$1.5 million of that in salaries.
- Roads were rebuilt to higher standards in the areas effected by the wind farms. Impact neutral for local infrastructure.
- Land values increased/directly affected by turbines and did not decrease in other areas not directly affected by the wind farms.

# The Public Process

- Developer must file a request for a Conditional Use Permit (CUP) \$100 fee.
- Developer must be able to provide contracts between the affected property owners and developer identifying time frame, legal description, title, decommission of equipment and ancillary infrastructure (exclude contract payments) to include overall CUP boundary.
- Developer must supply certified listing of all mineral right owners affected by the CUP showing proper notification or pay for notification by County.
- Developer must present a preliminary environmental, habitat, historic and archeological study that has been reviewed and deemed sufficient by the State Game & Fish Department for initial turbine site selection and for any crucial or important wildlife and habitat areas.
- Developer must apply for a CUP for overhead transmission lines that transmit generated energy from the sub-stations to the electric grid. \$100 fee. That includes any state or federal permits required.
- Developer must apply for subdivision platting to address operation facilities. \$111 fee.
- Developer must provide a preliminary system design that addresses environmental, habitat, historic and archeological impacts, safety issues, setbacks to structures, right-of-ways, power lines, and outside boundaries of CUP area.
- Developer must agree to enter into a Development Agreement between the Governing Body and Developer that encompasses the overall project and is a covenant that runs with the land, thus making it binding on all assigns.
- The County Planning Commission following the public hearing process makes findings, recommendations and such conditions and restrictions as they deem appropriate following public input to the Board of County Commissioners who have final approval of the CUP request.

# Development Agreement

- Utilizes a standard legal format provided by County. The Board of County Commissioners assign a negotiation team to negotiate specifics of the agreement to assure no conflict when approving the CUP as it is a property right.
- Items specific to the agreement:
  - Memorializes all actions by Governing Body.
  - Qualifies code questions.
  - Establishes Maximum Time to develop project.
  - Establishes number of turbines and power generated.
  - Sets Building permit fees to be collected.
  - Establishes third party inspector for project.
  - Guarantees payment of Use Taxes on all towers installed.
  - Establishes Definitions.
  - Outlines Infrastructure, Responsibility for Funding.
  - Establishes Infrastructure Construction, Dedication, Operation, Maintenance and any acceptance into the County System.
  - Establishes Development Rights.
  - Appoints representatives; Default; Cure Period.
  - Successors and assigns. Establishes covenants running with the land so approved.
  - Term of Agreement with right to extend for one additional period.
  - Recordation and Effect within 10 days of execution.
  - All exhibits attached.



# Encourage Safety and Efficiency of Design

- Encourage Developer to engineer project to maximize wind potential and compact design to assure limited sprawl.
- Encourage Developer to utilize most efficient equipment to assure long project life.
- Require Developer to provide As-Build drawings of development following issuance of Certificate of Occupancy.
- Require Developer mark meteorological towers both on tower and guy wires to provide safety of small aircraft in agricultural areas.
- Require separate agreements to handle impact on road networks. Specifically: Individual Right-of-way agreements to mitigate surface conditions, dust control, and reconstruction of roadways to include realignment within right-of-ways to assure safety of traveling public. Additionally, following temporary speed limit adjustments by Governing Body in the construction areas, Developer is required to place traffic control signage. Speed limits sunset at agreed upon time frame for development. Temporary wide turnouts at lay down yards and specific intersections are approved by permit and restored at Developer expense following construction. Crossing of County Roads with underground utilities are consolidated to reduce impact. Heavy equipment crossing requires specific permitting and repair to the roadway.





































06/30/2009



06/30/2009



06/30/2009























# *Development Agreement Example*

- **DEVELOPMENT AGREEMENT**

- **THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this XXth day of Month, 20XX, by and between **LOGAN COUNTY, COLORADO** ("County") and **(NAME) OF COMPANY**, a Delaware limited liability company ("Developer") for the new wind energy project ("Wind Energy Project") in Logan County, Colorado.

- **RECITALS**

- A. Developer is the Easement holder for wind energy and transmission purposes of the real property located in Logan County, Colorado, legally described on Exhibit "A" ("the Property").
- B. County and Developer acknowledge and agree that the development of the Wind Energy Project will result in planning and economic benefits to the County and its residents by (i) requiring the development of the Wind Energy Project to be consistent with existing County Policy in effect at the time of the approval of this agreement, (ii) increasing tax and other revenues to County based upon, among other things, the construction of improvements on the Wind Energy Project and the use of the Property for renewable energy production purposes while continuing the agricultural purpose on the land, (iii) creating jobs through the development of the Wind Energy Project on the Property and through the continued maintenance of the facilities and structures on the Property, (iv) constructing connecting transmission lines to service this energy resource, and (v) providing a revenue stream for the underlying Property owners.
- County and Developer further acknowledge that the development of the Property pursuant to this Agreement will significantly benefit Developer by providing the ability to improve and expand a renewable energy resource facility within Logan County that will benefit the citizenry within the State of Colorado with these enhanced resources.
- C. County has adopted regulations concerning development within its corporate limits, consisting of Zoning and Subdivision Regulations, Building Codes and Floodplain Regulations which are in effect at the time of execution of this Agreement or as may be amended by the Governing Body from time to time.
- D. Developer has expended and will continue to expend considerable amounts of time and money in planning for future development of the Property.
- E. County has approved, by Resolution No. 200X-XX, and Resolution No. 200X-XX, the Conditional Use Permits (please see Exhibit B) for the Property identified as "A" Agricultural District with Conditional Use Permit (CUPs) on the XXth day of MONTH, 200X.
- F. County has approved one or more Conditional Use Permits (CUPs) for the Wind Energy Project that encompass an identified area for the location of all wind towers (please see map attached as Exhibit C) and an identified area for the installation of the associated transmission line. The identified area for the location of all wind towers comprises one property for purposes of regulatory "setback" requirements and the boundary of the identified area is the "property line" for purposes of measuring setback compliance, regardless of the actual arrangement of interior property lines.

## *Development Agreement Example – Continued – Pg.2*

- G. The approval of the CUPs for the identified property by the County was made subject to the approval and recordation of a development agreement mutually agreeable to Developer and County.
- H. The Wind Energy Project is proposed to be developed over a maximum time period of five (5) years. The foregoing development schedule is conceptual and subject to change in Developer's sole and absolute discretion, so long as any change is consistent with the conditions established in the Logan County CUPs for this Wind Energy Project, and this Agreement, as may be amended.
- I. County, through the approval of the Agreement, will limit costs to Developer by structuring the Logan County Building Permit fees for an individual project consisting up to sixty-seven (67) wind turbines and towers within the CUPs for the identified property, instead of calculating fees for each tower as a separate structure. In lieu of the existing Logan County Building Permit Fee schedule associated with the new Wind Energy Project, Developer will pay fees set forth in Exhibit "D" where the Wind Energy Project is calculated as one all encompassing structure. However, the individual towers will be issued separate Building Permit Numbers for tracking and inspection purposes. Logan County Building Permit Fees and applicable Use Taxes within the boundaries of the Wind Energy Project as set forth in Exhibit A will be calculated in accordance with the methodology set forth in Exhibit "D".
- J. The County shall accept the reduced building permit fees in Exhibit "D" as the total amount of building permit fees payable. The Developer shall pay all Logan County Sales and Use Taxes related to Wind Energy Project.
- K. The County and Developer have established the use of a third party inspector who is agreeable for both parties for the inspection of facilities covered by this Agreement.
- L. In the event that less than XX MW (megawatts) nominal generating capacity of wind energy turbines are installed in connection with the Wind Energy Project, the Developer will pay all use taxes and building permit fees as established in Exhibit "D" that accrue on the towers Developer installs, and the building permit fee will be based on the consolidated cost of the towers installed as one Wind Energy Project.
- M. Prior to the date of this Agreement, County has conducted public hearings on the Conditional Use Permits (CUPs), for the Wind Energy Project, and this Agreement. The County Governing Body has issued its approval of the CUPs, zoning of the Property to "A" Agricultural District with CUPs for Developer.
- N. Developer and County desire to provide in this Agreement for (i) Developer's assurances to County that the Property and Infrastructure Improvements related to the Wind Energy Project will be developed in accordance with the provisions of this Agreement, and (ii) County's assurances to Developer that it will be permitted to develop the Property in accordance with the provisions of this Agreement and the applicable permits, and that such approval shall be for the period of time set forth in this Agreement. Nothing in this Agreement shall restrict the authority of the County to create, modify or amend any policies or regulations, and any new or amended Development Agreement between the parties shall be bound by the policies and regulations in effect at the time of execution of such new or amended agreement.

## *Development Agreement Example – Continued – Pg.3*

- O. County and Developer further acknowledge that the development of the Property pursuant to this Agreement will significantly benefit Developer by providing it with the ability to develop the Wind Energy Project in accordance with the conditions stipulated in the approved CUPs on this identified property.
- 

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, County and Developer state, confirm and agree as follows:

### **• AGREEMENT**

- 1. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Agreement by this reference.
- 2. **Definitions.** The following terms and phrases shall have the meaning set forth below:
- (a) **Commencement of Construction:** That date upon which ground is broken in connection with the construction of a Wind Energy Project improvement.
- (b) **Equivalent Structure Unit ("ESU"):** No residential structures. Industrial buildings-operation and maintenance facility, wind turbine generators (with towers), pad mount transformers, buried and overhead cable, substations, meteorological towers, related equipment and structures, roads, rights-of-ways, transmission facilities, and other required facilities and uses as set forth in the approved Conditional Use Permits (CUPs) for this "A" Agricultural District.
- (c) **Exhibits:** Attachments to this Agreement, fully incorporated and made a part of this Agreement. A complete list of all Exhibits to this Agreement is found immediately after the signature pages.
- (d) **Infrastructure Improvements:** Public roads (paved or unpaved), and the associated road support and drainage facilities, including back-slope cuts, borrow ditches, culverts, bridges, and traffic control devices, and the legal easements providing for all public roads and associated road support and drainage facilities.
- 3. **Infrastructure.**
- 3.1 **Responsibility for Funding and Construction of Infrastructure Improvements.**
- (a) Subject to the provisions herein contained, Developer agrees to assume and satisfy, at its own cost, all applicable development costs, and to construct or install, or cause to be constructed or installed, in accordance with County Codes and Regulations, any Wind Energy Project improvements and Infrastructure Improvements related to the Wind Energy Project described herein.
- (b) Developer accepts responsibility for all engineering and surveying costs for all improvements for the Wind Energy Project, including any Infrastructure Improvements related to the Wind Energy Project, whether such improvements are constructed directly by the Developer or by the County.



## *Development Agreement Example – Continued – Pg.4*

- (c) All Infrastructure Improvements related to the Wind Energy Project shall be designed and constructed in compliance with standards and specifications of Logan County and applicable state agencies.
- (d) Construction of improvements shall not commence until the plans and specifications for such improvements have been approved by County and/or the State or Federal Agencies as applicable.
- *Modification of Sequencing.* The sequencing of the construction of Infrastructure Improvements related to the Wind Energy Project may be modified by a formal written amendment to this Agreement if County and Developer so agree.
- **4. Infrastructure Construction, Dedication; Operation; Maintenance.** All Infrastructure Improvements related to the Wind Energy Project constructed on public right-of-ways shall be constructed in a good and workmanlike manner and in accordance with all applicable laws, codes, regulations and design standards. Infrastructure Improvements intended to become a part of the County system shall, subject to inspection and acceptance by the County in accordance with applicable laws, codes, rules and regulations, be dedicated to the County. Thereafter, County shall accept the dedication and be solely responsible for the operation and maintenance of the Infrastructure Improvement, upon completion of the following:
  - Receipt of certification from Developer's Engineer that the Infrastructure Improvements were constructed in substantial compliance with the approved plans and specifications.
  - Logan County Road and Bridge Department recommends acceptance to the Board of County Commissioners.
  - Receipt of a reproducible set of record drawings (as built).
  - The County maintenance responsibilities are subject to any applicable County contractor's maintenance bond obligations.
- **5. Development Rights.**
  - **5.1 Effect on Zoning.** Developer and County acknowledge and agree that by zoning the property "A" Agricultural District with CUPs to operate the Wind Energy Project, including wind turbine generators, pad mount transformers, buried and overhead cable, transmission facilities, substations, meteorological towers, related equipment and structures, roads, rights-of-way, and other required facilities, County shall not, during the term of the Agreement, adopt by resolution or administrative directive or policy any land use regulation, rule, moratorium or other limitation on the density, intensity, rate, timing or sequencing of development permitted on the Wind Energy Project under the approved "A" Agricultural District Zoning with CUPs, except as may be necessary to:
    - (a) Comply with any state or federal laws or regulations, provided that if any such state or federal law or regulation prevents or precludes compliance with any provision of the Agreement, such affected provision shall be modified as may be necessary in order to comply with such state or federal law or regulation;

## *Development Agreement Example – Continued – Pg.5*

- (b) Alleviate or otherwise contain a legitimate, bona fide threat to the health or safety of the general public, in which event any resolution, rule or regulation to be imposed in an effort to contain or alleviate such threat may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; or
- (c) Adopt or enforce regular amendments to County's building and fire safety codes.
- Nothing in this agreement shall restrict the authority of the County to modify or amend any current policies or regulations, and any future Development Agreement between the parties should be bound by the policies and regulations in effect at the time of execution of a new Development Agreement.
- **5.2 Effect of Equivalent Structure Units ESU's on the Development Design of the Wind Energy Project.** It is agreed and understood by Developer and County that the Wind Energy Project will be developed per the approved site plan for each CUP. Such approved site plan may show phasing of development. Within the phase Developer and County shall determine the number of ESU's as approved in the CUP. This is to establish the infrastructure required to serve the property. Developer further agrees that all on/off site requirements established by regulation, code, design criteria or this Agreement shall be met and shall be controlling.
- **5.3 Zoning Approval with CUPs.** In accordance with the provisions of the Logan County zoning regulation, Developer and County desire that County's approval of the CUPs for the Wind Energy Project and its zoning category continue unabated.
- **6. Representatives; Default; Cure Period.**
- **6.1 Appointment of Representatives.** County and Developer each shall designate and appoint a representative to act as a liaison between County and its various departments and Developer. The initial representative for County shall be the Chairman of the Board of County Commissioners, and the initial representative for Developer shall be (NAME) pursuant to Paragraph 7.1. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.
- **6.2 Default; Cure Period.** Failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within the thirty day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the thirty (30) days, the non-defaulting party shall have all rights and remedies which may be available under law or equity including without limitation, the right to specifically enforce any term or provision hereof.

# *Development Agreement Example – Continued – Pg.6*

- 7. **Notices and filings.**

- **Manner of Serving.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made and delivered or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

- County: (NAME), Chairman  
BOARD OF COUNTY COMMISSIONERS  
315 North Main Street, Suite 2  
Sterling, Colorado 80751

- Developer: (NAME), TITLE  
COMPANY (NAME)  
STREET ADDRESS  
CITY, STATE, ZIP

- or to such other address as either party hereto may from time to time designate in writing and deliver in a like manner.

- 7.2 **Mailing Effective.** Notices, filings, consents, approvals and communication given by mail shall be deemed delivered upon receipt or seventy-two (72) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above, whichever first occurs.

- 8. **General.**

- 8.1 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by County or Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

- 8.2 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

- 8.3 **Captions.** The captions or descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

- 8.4 **Adoption or Agreement.** This Agreement shall be approved and adopted by the Governing Body of the County of Logan County, Colorado.

- 8. **Further Acts.** Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality of the foregoing, County shall cooperate in good faith and process in a reasonably timely fashion



## *Development Agreement Example – Continued – Pg.7*

- any requests and applications for permit approvals or revisions, and other necessary approvals relating to the development of the Property by Developer or its successor.
- 8.6 **Successors.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as covenants running with the land. Developer and County expressly acknowledge and agree that Developer may sell all or some of the Wind Energy Project prior to the development of same by Developer. In the event of such sale, Developer shall no longer have any obligations hereunder with respect to the portion of the Wind Energy Project so sold. Notwithstanding anything to the contrary contained herein, neither Developer nor any purchaser of any portion of the Wind Energy Project shall be required to complete all or any part of the Wind Energy Project or Infrastructure Improvements related to the Wind Energy Project; provided, however, the County shall have no obligation to issue building or other permits with respect to any portion of the Wind Energy Project for which the Wind Energy Project Infrastructure Improvements required hereunder are not constructed.
- 8.7 **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto and notwithstanding the provisions of County's zoning regulations, Developer and County desire that this Agreement continue unabated for a **term of eight (8) years** and shall expire on the **8th** annual anniversary of such date; provided, however, that either party hereto shall have the right to extend the term hereof for one additional period of **eight (8) years** upon written notice delivered to the other at least **three (3) months** prior to the expiration hereof.
- 8.8 **No Partnership.** It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between Developer and County.
- 8.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.
- 8.10 **Amendment.** No change or addition is to be made to this Agreement except by a written amendment executed by the parties hereto. Within ten (10) days after any amendments to this Agreement, such amendment shall be recorded with the County Clerk and Recorder, Logan County, Colorado.
- 8.11 **Good Standing; Authority.** Each of the parties represents and warrants to the other that:
  - (a) it is duly formed and validly existing under the laws of its state of formation,
  - (b) it is duly qualified to do business in the State of Colorado and is in good standing under applicable state laws, and
  - (c) the individuals executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

## *Development Agreement Example – Continued – Pg.8*

8.12 **Governing Law.** This Agreement shall be construed and interpreted under the laws of Colorado.

- 8.13 **Recordation and Effect.** This Agreement, shall be recorded in its entirety with the County Clerk and Recorder, Logan County, Colorado, not later than ten (10) days after its execution. This Agreement shall constitute covenants that run with the land and are binding on successors in interest, subject to Paragraph 8.6. Exhibits “B,” “C” and “D” which are too voluminous and/or not in an appropriate form for recording, shall be available for review and inspection during normal business hours at:
  - County of Logan County
  - County Planning Office
  - 315 Main Street, Suite 2
  - Sterling, Colorado 80751
- 8.14 **No Developer Representations.** Nothing contained in this Agreement shall be deemed to obligate County or Developer to complete any part or all of the development of the Property.
- 8.15 **Termination for Conflict.** County may terminate this Agreement without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of County becomes an employee or agent of Developer in any capacity or a consultant to Developer with respect to the subject matter of the Agreement within two (2) years after its execution.
- 8.16 **Construction of Agreement.** This Agreement has been arrived at by negotiation and shall not be construed against either party to it or against the party who prepared the last draft.
- 8.17 **Exhibits.** The exhibits listed on the page immediately following the signature page are attached hereto and shall be deemed to have been incorporated herein by this reference with the same force and effect as is fully set forth in the body hereof.

» **COUNTY OF LOGAN COUNTY, COLORADO**

» \_\_\_\_\_  
**(NAME), CHAIRMAN  
Board of County Commissioners**

• **ATTEST:**

• \_\_\_\_\_  
• **(Name), COUNTY CLERK and RECORDER**

## *Development Agreement Example – Continued – Pg.9*

- REVIEWED FOR LEGAL SUFFICIENCY BY:

- \_\_\_\_\_
- (Name), COUNTY ATTORNEY
- 
- 

DEVELOPER:  
COMPANY

\_\_\_\_\_  
(NAME)  
COMPANY

- **ACKNOWLEDGMENT**

- STATE OF COLORADO )
- ) Ss.
- COUNTY OF LOGAN )
- 

- – (NAME), CHAIRMAN and (Name), COUNTY CLERK and RECORDER of the COUNTY OF LOGAN COUNTY, COLORADO acknowledged this instrument before me on \_\_\_\_\_, 20XX.
- 

\_\_\_\_\_  
Notary Public

My Commission Expires:

- **ACKNOWLEDGMENT**

- STATE OF \_\_\_\_\_ )
- ) Ss.
- COUNTY OF \_\_\_\_\_ )
- 

The foregoing document was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20XX, by \_\_\_\_\_, (NAME) LLC

\_\_\_\_\_  
Notary Public

My Commission Expires:



## *Development Agreement Example – Continued – Pg.10*

- EXHIBITS
- **Exhibit “A” Legal Description of the Property.**
- **Exhibit “B” Conditional Use Permits**  
(NAME) OF COMPANY
  - » Resolution No. 20XX-XX
  - » CUP No. XXX – Wind Farm – XXMW
  - » Resolution No. 20XX-XX
  - » CUP No. XXX – 115kV Electric Transmission Line
- **Exhibit “C” Map of Wind Project Area**
- **Exhibit “D” Logan County Building Permit Fee Schedule and Logan County Sales and Use Tax Schedule**

# CUP Resolution Example – Pg 1

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•                   **RESOLUTION  
NO. 20XX-XX**

•           **A RESOLUTION GRANTING THE ESTABLISHMENT OF A CONDITIONAL USE PERMIT (CUP) NO. XXX FOR THE CONSTRUCTION OF A STATE OF THE ART; WIND POWERED GENERATING FACILITY TO INCLUDE, UP TO XXX WIND TURBINE GENERATORS, PAD MOUNTED TRANSFORMERS, COLLECTOR SUBSTATION, OPERATIONS AND MAINTENANCE FACILITY WITH LAYDOWN YARD, TEMPORARY BATCH PLANT, METEOROLOGICAL TOWERS, OVERHEAD AND BURIED CABLE, ROADS, RIGHTS-OF-WAY, TRANSMISSION AND OTHER REQUIRED FACILITIES AND USES IN PORTIONS OF TOWNSHIP X NORTH, RANGES XX AND XX WEST, OF THE 6TH PRINCIPAL MERIDIAN IN LOGAN COUNTY, COLORADO.**

•  
•           **WHEREAS**, (NAME) OF COMPANY has applied for a Conditional Use Permit (CUP) to construct a state of the art; wind powered generating facility to include: up to NUMBER (XXX) wind turbine generators that would generate approximately XX megawatts; pad mounted transformers, collector substation, operations and maintenance facility with lay down yard, temporary batch plant, meteorological towers, overhead and buried cable, roads, rights-of-way, transmission and other required facilities and the term requested for the permanent facilities is for a period of thirty (30) years, equal to the term of the property easements within the identified boundary of the CUP. Said CUP is located in:  
•           INSERT LEGAL OF BOUNDARY OF CUP AREA  
•           of the 6th Principal Meridian in Logan County, Colorado, and  
•

•           **WHEREAS**, the property is currently zoned Agricultural, and

•           **WHEREAS**, the (NAME) OF COMPANY facility XX of (NAME) OF TOWN, Colorado will transmit its wind energy to the power grid, in this case interconnecting to local LIST POWER CONNECTION 115kV transmission system at a new LIST NEW Switchyard, east of (NAME) COMMUNITY, Colorado and  
•

•           **WHEREAS**, a meeting of the Board of County Commissioners on the conditional use permit was held on MONTH XX, 20XX.  
•

•           **NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LOGAN COUNTY, COLORADO:**

–           **I. APPROVAL:**

- The application of (NAME) OF COMPANY for a thirty (30) year Conditional Use Permit, equal to the term of the property easements within the identified area of the CUP on the above stated property, is GRANTED, subject to the conditions set forth below.

–           **II. FINDINGS OF FACT:**

- The continued use is compatible with existing land uses in the area, which is zoned Agricultural.

# CUP Resolution Example – Pg 2

## III. CONDITIONS:

1. The applicant shall submit to Logan County Planning & Zoning an as-built map showing the location of the XXMW generators within the boundaries of the CUP project.
2. The right-of-way crossings for the CUP area transmission line will be applied for, subsequent to a hearing on this Application by the Board of County Commissioners.
3. Building Plans be submitted for administrative approval prior to start of construction.
4. The permit term shall be for thirty (30) years on the identified and approved CUP. If any changes, such as alterations or enlargements, occur to the CUP identified and approved herein, the applicant shall be responsible for seeking and obtaining separate approval of a permit and term of approval for those proposed changes.
5. As a condition of approval of the CUP the applicant shall enter into a Development Agreement between the Board of County Commissioners and applicant that will include the conditions set forth herein as well as specific details on the development of the wind project.

**BE IT THEREFORE RESOLVED**, that a Conditional Use Permit is granted to (NAME) OF COMPANY to construct a state of the Art; wind powered generating facility to include up to: XX wind turbine generators that would generate approximately XX megawatts; pad mounted transformers, collector substation, operations and maintenance facility with lay down yard, temporary batch plant, meteorological towers, overhead and buried cable, roads, rights-of-way, transmission and other required facilities and the term requested for the permanent facilities for a period of thirty (30) years, subject to the conditions set forth above. The Board of County Commissioners of Logan County retains continuing jurisdiction over the permit to address future issues concerning the site and to insure compliance with the conditions of the permit. The applicant is responsible for complying with all of the forgoing conditions and all other county zoning or other land use regulations. Noncompliance with any of the conditions may be cause for revocation of the permit.

Done the XXth day of MONTH, 20XX.

LOGAN COUNTY BOARD OF COMMISSIONERS  
LOGAN COUNTY, COLORADO

_____	(Aye)(Nay)
(NAME), Chair	
_____	(Aye)(Nay)
(NAME)	
_____	(Aye)(Nay)
(NAME)	

I, (Name), County Clerk and Recorder in and for the County of Logan, State of Colorado, do hereby certify that the foregoing Resolution was adopted by the Board of County Commissioners of the Logan and State of Colorado, in regular session on the XXth day of MONTH, 20XX.

\_\_\_\_\_  
County Clerk and Recorder



# CUP Resolution Example – Pg 3

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•  
•                   **RESOLUTION**  
                          **NO. 20XX-XX**

•                   **A resolution granting the establishment of a Conditional Use Permit (CUP) for the operation of a 115 kV electric transmission line located in portions of Townships X & X North, Range XX West, of the 6th Principal Meridian in Logan County, Colorado.**

•                   **WHEREAS,** (NAME) OF COMPANY has applied for the establishment of a CUP to operate a 115 kV electric transmission line for a period of fifty (50) years, equal to the term of the property easements on the corridor. Said transmission line is located in portions of Townships X & X North, Range XX West, of the 6th Principal Meridian in Logan County, Colorado, more specifically identified as:  
•                   PROVIDE LEGAL OF CORRIDOR, and  
•

•                   **WHEREAS,** the property is currently zoned Agricultural, and

•                   **WHEREAS,** the (NAME) OF COMPANY facility XX of (NAME) OF TOWN, Colorado will transmit its wind energy from the electric substation over the 115 kV electric transmission line to the power grid, in this case interconnecting to local (NAME) CONNECTION OF CARRIER 115kV transmission system at a new (NAME) COMPANY Switchyard, XX of (NAME) OF COMMUNITY, Colorado, and  
•

•                   **WHEREAS,** a meeting of the Board of County Commissioners on the conditional use permit was held on MONTH XX, 20XX.  
•

•                   **NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LOGAN COUNTY, COLORADO:**

•                   **I. APPROVAL:**

•                   The application of (NAME) OF COMPANY for a fifty (50) year Conditional Use Permit, equal to the term of the property easements on the corridor on the above stated property, is GRANTED, subject to the conditions set forth below.

•                   **II. FINDINGS OF FACT:**

•                   The continued use is compatible with existing land uses in the area, which is zoned Agricultural.

•                   **III. CONDITIONS:**

- 1. That any proposed expansion or power transmitted or amendment to the currently requested/approved corridor would require a new CUP Application.
- 2. That the CUP approval be granted conditional to all individuals along the proposed corridor having signed the easement crossing their property or properties prior to the issuance of any construction permits or right-of-way permits for construction of the project.

# CUP Resolution Example – Pg 4

- **BE IT THEREFORE RESOLVED**, that a Conditional Use Permit is granted to (NAME) OF COMPANY to operate a Transmission Line for a period of fifty (50) years, subject to the conditions set forth above. The Board of County Commissioners of Logan County retains continuing jurisdiction over the permit to address future issues concerning the site and to insure compliance with the conditions of the permit. The applicant is responsible for complying with all of the forgoing conditions and all other county zoning or other land use regulations. Noncompliance with any of the conditions may be cause for revocation of the permit.

- 
- Done the XXth day of MONTH, 20XX.

» LOGAN COUNTY BOARD OF COMMISSIONERS  
» LOGAN COUNTY, COLORADO  
» \_\_\_\_\_ (Aye)(Nay)  
» (NAME), Chair

- 
- » \_\_\_\_\_ (Aye)(Nay)
- » (NAME)
- » \_\_\_\_\_ (Aye)(Nay)
- » (NAME)

- 
- I, (Name), County Clerk and Recorder in and for the County of Logan, State of Colorado, do hereby certify that the foregoing Resolution was adopted by the Board of County Commissioners of the Logan and State of Colorado, in regular session on the XXth day of MONTH, 20XX.

- \_\_\_\_\_
- County Clerk and Recorder
- 

- **(NAME) OF COMPANY WIND PROJECT**
- **LOGAN COUNTY, COLORADO**
- **INSERT LEGAL BOUNDARY DESCRIPTION OF PROJECT**
- **EXHIBIT "A"**

## Potential Wind Energy Siting Regulations Discussion – Pg 1

- *The following are discussion points provided by counties involved with potential wind energy projects and are presented here to inform the viewer of the thoughts presented from differing viewpoints. The presenter does not endorse or refute any of the following formats:*
- Wind Energy Siting Regulations amend the County Zoning Rules and Regulations. The regulations would require a Preliminary Plan review process which is meant to consider the land use from a local zoning and land use perspective versus the required studies and formal details of the Project. This puts the County, adjacent counties, neighboring property owners and the general public on notice that a property is under consideration for a potential **Wind Energy Conversion System (WECS)** Project, gives the Applicant some awareness of potential issues associated with a particular property and minimizes costs to the an Applicant until such time that a full WECS Project is planned.
- **A Special Permit application** may be submitted to request approval of a preliminary plan for a site for a potential WECS Project as an approved land use whereby the concept of said use is approved without implying that a WECS Project is approved or that any particular structure will ultimately be approved. Preliminary plan applications shall not require that studies, detailed site plans, formal agreements and other information requested per these Regulations be submitted. A separate Special Permit application will be required at a future date to proceed further with any WECS Project and that application will necessarily meet all applicable requirements of these Regulations. A Preliminary Plan application will contain financial assurance that the applicant is capable of constructing and operating the proposed WECS Project. The Special Permit application process for anemometers/meteorological towers represents a type of preliminary plan as it allows the County, neighboring landowners and the general public to be made aware that a property is being studied for a potential WECS Project with a Special Permit request for an anemometer/meteorological towers.
- The Special Permit Application provides the final siting approval. This application is refereed to the Board of County Commissioners from the Planning department.
- **Note: Special Use Permits usually do not extend property right and are not usually assignable. With the dollar amount invested this may not be a viable code that allows development and assignability. You may have to renegotiate each time the project is transferred to a new owner.**



## Potential Wind Energy Siting Regulations Discussion – Pg 2

- **Public Health, Safety and Welfare**

- *The proposed Wind Energy Facility shall not be detrimental to the health, safety or general welfare of the community. The Wind Energy Facility, including all Wind Turbines, shall be maintained and operated in accordance with manufacturer specifications, Owner Environmental Health and Safety Plans, and applicable Occupational Health and Safety Administration (OSHA) requirements to ensure the safety of site personnel and the public.*

- **Compatibility with Adjacent & Surrounding Land Use(s)**

- *The Wind Energy Facility shall not result in an adverse impact to adjacent land.*
- *The Wind Energy Facility will not interfere with desirable existing community patterns.*

- **Conformance to Master Plans & Comprehensive Plans**

- *The proposed Wind Energy Facility is consistent with relevant provisions of the County Comprehensive Plan and any intergovernmental agreement between the County and a municipality that applies to the area where the use will occur.*

## Potential Wind Energy Siting Regulations Discussion – Pg 3

- **Compliance to State & Federal Regulations (EPA, COE, DEQ, SHPO, etc)**
- *WECS Project facilities shall be constructed to meet, and be maintained in compliance with all Federal, State and Local requirements. Written statements providing proof that the WECS Project is in full compliance with these relevant requirements shall be provided to the County Planning Office.*
- *If credible issues arise at any time during the review, and/or the approval development proposal process, related to compliance of Federal, State and/or Local requirements, the Applicant(s) at the discretion of the County Commissioners may be requested to provide additional studies, reports, maps and/or graphic depictions prepared by a professional qualified in the relevant discipline detailing the issues, characteristics, special features, potential impact, and mitigation measures that may be needed to minimize the issues....Nothing in these Regulations is intended to preempt other applicable Federal, State and/or Local laws and regulations.*
- *The Applicant(s) for the WECS shall comply with all applicable FAA, FCC, USFWS, DEQ and COE requirements including the Federal Wetlands regulations as established in the Federal Clean Water Act.*
- *The applicant shall have a third party, qualified professional conduct an analysis to identify and assess potential impacts on the surrounding environment including, but not limited to; wetlands, geologic hazards, flood hazards, wildfire hazards, past mining activity/hazards, and water and groundwater quality. Multiple analyses may be prepared for each of these characteristics. The applicant shall take appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant shall identify and evaluate the significant of any net effects or concerns that will remain after mitigation efforts.*

## Potential Wind Energy Siting Regulations Discussion – Pg 4

- **Roadways & Access**

- Legal access to a public right-of-way to and from the Wind Energy Facility shall be safe and in conformance with access standards set forth in the County Road and Bridge Standards.
- The applicant shall work with County Road and Bridge to ensure the proper maintenance and repair of all County roads utilized by the Wind Energy Project. All impacts to the roadway system shall be mitigated through roadway improvements or impact fees, or both.
- The Applicant will prepare a Roads Agreement that includes a mitigation plan to address potential impacts to County Roads to be used during construction. As part of the Roads Agreement, the Applicant at their expense will be required to return any County Roads that are impacted by construction to their pre-construction baseline condition.
- Adequate legal and physical access shall be demonstrated, and the applicant shall demonstrate it has secured, or can secure, all necessary approvals from the County, and any other applicable local governments, the Colorado Department of Transportation, and/or the United States Forest Service.
- An Applicant(s), Owner(s), or Operator(s) proposing to use any county, municipality, township, village or State road(s), for the purpose of transporting WECS(s) or Substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or Substation(s), shall:
  - a. Identify all such public roads. Detail mapping of haul routes shall be submitted with the development application.
  - b. Obtain applicable weight and size permits from relevant government agencies prior to construction.
  - c. Obtain new access, access modification or change of use of access permit; utility crossing permits from DOT for impacts to any State Highway facilities.
  - d. The Applicant(s) at the discretion of the County Commissioners may be requested to provide additional studies and reports prepared by a qualified professional(s) to determine if impacts to public roads will occur.
- If impacts are determined, a mitigation plan and/or long term road maintenance agreement will be required at the discretion of the County Commissioners.
- e. If potential road impacts are determined to extend beyond County boundaries the Applicant(s) will be responsible to contact all potentially impacted jurisdiction(s), and to provide written documentation of the contacts as well as written statements from the jurisdiction(s) that they are aware of the potential impact. All required written statements shall be provided to the County Planning Department prior to the scheduling of the hearing for the WECS Project(s).
- To the extent an Applicant(s), Owner(s), or Operator(s) must obtain a weight or size permit from the County, the Applicant(s), Owner(s), or Operator(s) shall:
  - a. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
  - b. Secure Financial Assurance in a reasonable amount at the discretion of the County Commissioners for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS Project.
  - c. The use of public roads and other infrastructure shall be in accordance with and compliance of Federal, State and County regulations governing such activities. Any degradation to or damage of public roads or other infrastructure by parties affiliated with the installation, operation or maintenance of WECS Project will bear all costs required to return the public roads or other infrastructure to their original or better condition prior to their use of same. If the County has entered into any Memorandum of Understanding with any other counties in the proposed WECS Project(s), including counties in other states as applicable, the Owner shall furnish proof of compliance with the requirements of any such county.



## Potential Wind Energy Siting Regulations Discussion – Pg 5

- **Impact Fees**

- If the application shows that there will be unmitigated impacts to County roads or other County capital facilities caused by the Wind Energy Facility, the County may assess an impact fee in the amount necessary to offset the impact to roads or other capital facilities.
- In addition to the Roads Agreement the Applicant shall also complete a study to assess the potential effects of the proposed project on County services and Capital facilities. In the event that impacts to County services or County capital facilities from construction and operation of a Wind Energy Facility are identified, the Applicant shall develop a plan to maintain County services and County capital facilities. If impacts cannot be fully mitigated, the Applicant may be required to pay the County a mutually agreed upon impact fee to allow the County to maintain existing County Services and Capital facilities. The Owner shall provide all necessary training to allow the County to adequately handle the increased services provided by local fire departments and ambulance departments caused by the construction and operation of the Wind Energy Facility.

- **Liability Insurance**

- The Owner(s) or Operator(s) of the WECS Project(s) shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. The Applicant(s) shall provide proof of insurance to the Board of County Commissioners prior to the Board's approval of the submitted application. If the application is approved, the Owner(s) or Operator(s) of the WECS(s) shall provide proof of insurance to the Board of County Commissioners annually.

## Potential Wind Energy Siting Regulations Discussion – Pg 6

- **Decommissioning Plan: One of the most controversial topics facing siting requirements.**
- The applicant shall submit a decommissioning plan. The plan shall include: 1) The anticipated life of the project, 2) The estimated decommissioning costs net of salvage value in current dollars, 3) The method of ensuring that funds will be available for decommissioning and restoration, and 4) The anticipated manner in which the project will be decommissioned and the site restored.. If a utility scale wind energy system ceases to perform its originally intended function for more than 12 consecutive months, the system shall be removed no later than six (6) months after the end of the 12 month period.
- Prior to receiving siting approval under these Regulations, the County and the Applicant(s), Owner(s), and/or Operator(s) must formulate a Decommissioning Plan to ensure that the Wind Energy Facility/WECS Project is properly decommissioned. The decommissioning Plan may be based on landowner agreements, but shall include the following:
  - A. Provisions describing the triggering events for decommissioning the WECS Project or any portion thereof upon 18 months of continuous non-operation of the facility or of any aspect of any facility, unless by force majeure;
  - B. Provisions for the removal of structures, debris and cabling, including those below the soil surface down to 24 inches;
  - C. Provisions for the restoration of the soil and vegetation;
  - D. An estimate of the decommissioning costs certified by a Professional Engineer to be updated every five (5) years following year 15;
  - E. Financial Assurance to begin in year 15, secured by the Owner(s) or Operator(s), for the purpose of adequately performing decommissioning, in an amount equal to the Professional Engineer's certified estimate of the decommissioning costs;
  - F. Identification of and procedures for County access to Financial Assurances;
  - G. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner(s) or Operator(s) and any of their successors, assigns or heirs; and
  - H. A provision that the County/Municipality shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning.
  - I. A provision that the County/Municipality shall have the right to review and reconsider the WECS Project's Decommissioning Plan at the time of decommissioning, consistent with changes in the land use of the project at that time.

## Potential Wind Energy Siting Regulations Discussion – Pg 7

- **Financial Assurance:** These are controversial topics facing siting requirements.
- The applicant shall provide financial assurance in one, or a combination of the following, at the discretion of the County Commissioners: self bond, a surety bond, a federally insured certificate of deposit, government-backed securities, or cash. Evidence of the selected form(s) of assurance of financial responsibility shall be filed with the County Commission as part of the permit application procedures and prior to the approval of applicant(s) application. The County Commission may reject the proposed forms of assurance of financial responsibility if the evidence submitted does not adequately assure that funds will be available as required by these rules. Applicant(s) shall be notified in writing within 60 days of receipt of the evidence of financial assurance of the decision to accept or reject the proposed forms of financial assurance. If an application is approved, any bond or other form of financial assurance may be canceled by the surety only after ninety (90) days written notice to the Board of County Commissioners, and upon receipt of the Board's written consent, which may be granted only when the requirements of the bond or assurance have been fulfilled. Financial assurance amount will be recalculated on a yearly basis at the discretion of the Board of County Commissioners; and
- **Financial Assurance Forfeiture.**
- Bond or other financial assurance forfeiture proceedings shall occur only in the event that abandonment and decommissioning does not comply with the Decommissioning Plan and a cure period of 60 days has expired.



## Potential Wind Energy Siting Regulations Discussion – Pg 8

- **Noise**
- The proposed Wind Energy Facility shall comply with the statutory provisions for maximum permissible noise levels in State or County Regulations.
- **Protection of Agricultural Lands**
- The Wind Energy Facility shall not have a significant adverse impact on agricultural lands and agricultural operations above what is allowed for under landowner lease agreements.
- **Protection of Important Areas**
- The Wind Energy Facility shall not significantly degrade areas of paleontological, historic, or archaeological importance. If the site of the Wind Energy Facility includes or potentially affects known areas of historic, paleontological or archaeological resources, applicant shall coordinate with the State Historic Preservation Office to minimize and or avoid impacts during construction.
- **Site & Facility Development Standards: Visual Impacts**
- Facilities, access roads, and utility lines should be located to avoid a dominant silhouette on ridgelines, and to preserve view corridors.
- Horizontal-axis wind turbines shall use tubular towers.
- Utility scale wind energy systems shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- The applicant shall conduct an analysis on potential shadow flicker at occupied structures. The analysis shall identify the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sunrise to sunset over the course of a year. The analysis shall identify problem areas where shadow flicker may affect the occupants of the structures and describe measures that shall be taken to eliminate or mitigate the problems.

## Potential Wind Energy Siting Regulations Discussion – Pg 9

- **Setbacks:**

- The distance between a utility scale wind energy system and the property lines of adjacent non-leased properties including public rights of way shall be at least the height of the wind energy system tower including the top of the blade in its vertical position. Leased property can include more than one parcel and the requirement shall apply to the combined properties.
- Each wind turbine shall be set back from the nearest residence, school, hospital, church or public library a distance no less than the greater of a) two (2) times its total height, or b) one thousand (1,000) feet.
- All WECS Project structures shall be set back a distance of one mile from any incorporated municipality or identified overlay development zone or district, unless waived by the municipality or County.
- **Safety**
- Visible, reflective, colored objects, such as reflectors, or balls shall be placed on the guy wires and on all towers for local small aircraft to identify.

- **Fire Protection**

- The Applicant(s), Owner(s) or Operator(s) shall submit to the local fire department and/or the Emergency Management Coordinator a copy of the site plan. Upon request by the local fire department and/or the Emergency Management Coordinator, the Owner(s) or Operator(s) shall cooperate with the relevant agency to develop any emergency response plan.

# Potential Wind Energy Siting Regulations Discussion – Pg 10

- **Underground Location of Electrical Controls and Power Lines**
- Unless geologic conditions or other technical or engineering considerations prevent underground installation, electrical collection system wiring and power lines for the Wind Energy Facility shall be installed underground except where the Wind Energy Facility collector system wiring is brought together from the project substation to the point of electrical interconnection. Overhead transmission lines are permissible from the project substation to the point of electrical interconnection. The crossing of private lands requires an approved CUP.
- All underground installations located within the public road easement or right-of-way shall comply with the applicable permit and design requirements of County Road and Bridge, and should include the following elements:
  - **Restoration.** Any disturbed portion of the right of way shall be restored as nearly as possible to the condition as existing immediately prior to installation.
  - **Safety.** Safety measures shall be implemented in accordance with County, State and Federal requirements to protect the traveling public.
  - **Roadway Crossing.** If the installation crosses a roadway, it shall be located as perpendicular to the roadway as physically possible and installed in compliance with the requirements of County Road and Bridge.
  - **As-built drawings.** As-built drawings shall be provided to County Road and Bridge once the installation has been completed.
  - **Permit and Notice to Proceed.** Work shall not commence until the required permit(s) and notice to proceed with the installation(s) have been issued by County.
- **Signs**
- Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy facility.
- No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades. Nacelles may have lettering that exhibits the manufacturer's and/or owner's identification.
- There shall be no signage or logo of any type allowed on the WECS tower(s) with the exception of address number, safety signs, warning signs and emergency contact signs. Any other signage shall only be allowed as approved by the County.